

**INDIANA BOARD OF TAX REVIEW**  
**Small Claims**  
**Final Determination**  
**Findings and Conclusions**

**Petition No.:** 18-017-08-1-5-00001  
**Petitioner:** Short Homeplace Family Limited Partnership  
**Respondent:** Delaware County Assessor  
**Parcel No.:** 18-10-11-300-012.000-032  
**Assessment Year:** 2008

The Indiana Board of Tax Review (“Board”) issues this determination in the above matter, and finds and concludes as follows:

**Procedural History**

1. Short Homeplace Family Limited Partnership appealed the subject property’s March 1, 2008 assessment. On August 26, 2010, the Delaware County Property Tax Assessment Board of Appeals (“PTABOA”) issued its determination denying Short Homeplace the relief it had requested.
2. Short Homeplace then timely filed a Form 131 petition with the Board. Short Homeplace elected to have its appeal heard under the Board’s small claims procedures.
3. On October 13, 2011, the Board held a hearing through its administrative law judge, Patti Kindler (“ALJ”).
4. The following people were sworn in and testified:
  - a) Kevin P. Short, general partner, Short Homeplace, L.P.
  - b) Kelly Hisle, deputy assessor

**Facts**

5. The subject property contains a single-family home located at 7601 W. York Prairie Way, Muncie, Indiana.
6. Neither the Board nor the ALJ inspected the property.
7. The PTABOA determined the following values for the subject property:

Land: \$63,000	Improvements: \$919,100	Total: \$982,100
----------------	-------------------------	------------------
8. On its Form 131 petition, Short Homeplace requested the following values:

Land: \$45,000	Improvements: \$675,000	Total: \$720,000
----------------	-------------------------	------------------

## Parties' Contentions

9. Summary of Short Homeplace's evidence and arguments:
- a) Short Homeplace argues that the subject property was assessed for more than it was worth, which resulted in excessive taxes. *Short argument.* The subject property's real estate taxes have increased while taxes for seven similar properties in Mt. Pleasant Township have decreased. To illustrate that point, Kevin Short, a general partner of Short Homeplace, prepared a chart summarizing taxes for the subject property and seven similar properties from 2005 through 2010. *Short testimony; Pet'r Ex. 2.*
  - b) Mr. Short primarily focused on comparing the subject home to a home at 5201 W Pineridge. Simmons Home Construction built both homes. Someone from Simmons told Mr. Short that the Pineridge home was of better quality, and therefore a higher grade, than the subject home. Despite the Pineridge home's superiority, the subject property has a higher tax burden. From 2005 to 2006, the subject property's taxes increased by \$1,200, while the Pineridge property's taxes decreased by \$1,300. In later years, the subject property's taxes increased exponentially compared to the Pineridge property's taxes. Thus, in 2007, Short Homeplace paid \$6,800 more in property taxes. For 2008 and 2009, Short Homeplace paid \$4,200 and \$5,000 more in taxes, respectively. *Short testimony; Pet'r Ex. 2.*
  - c) Mr. Short also prepared a chart laying out the quality grades for 12 homes, including the subject home, that Simmons built between 1991 and 2002. The grades range from a "B-2" to "A+1." According to Mr. Short, the subject home is graded too high at "A." The Pineridge property is graded at only "B+1." *Short testimony and argument; Pet'r Ex. 3.*
  - d) In addition to his own analysis, Mr. Short hired Anthony Rocco to appraise the subject property. Mr. Short said that he wanted an independent appraisal so he picked an appraiser from Henry County who was familiar with Delaware County, but who was not involved in any local politics. Because no Delaware County homes had sold for more than \$400,000 or \$500,000 for the last eight or nine years, Mr. Short asked Mr. Rocco to prepare his appraisal using the same seven properties that Mr. Short used in his own property tax comparison. Mr. Rocco's appraisal therefore provides an apples-to-apples comparison of the subject property and similar properties in Mt. Pleasant Township. *Short testimony and argument.*
  - e) Mr. Rocco valued the subject property at \$775,000. On the first page of his appraisal report, Mr. Rocco indicates that he estimated the property's value as of January 1, 2008. Elsewhere, however, Mr. Rocco indicates that he valued the property as of December 31, 2008. *Pet'r Ex. 1.* In addition, Mr. Rocco gave his opinion that, when compared to "similar quality constructions, even by the same builder . . . it would

appear that the construction grade quality of the subject should be re-graded to the B grade construction range.” *Pet’r Ex. 1 at 7.*

- f) Finally, Mr. Short contends that the sales offered by the Assessor in support of the subject property’s assessment do not represent an apples-to-apples comparison to the subject property. The Assessor relied on homes that are at least five years newer than the subject property. In addition, the Assessor’s sales are located in newer subdivisions with multiple amenities. The subject property, by contrast, is located in a cul-de-sac in a soybean field. *Short testimony and argument.*

10. Summary of the Assessor’s evidence and arguments:

- a) Although Mr. Rocco described his analysis as a “sales-comparison,” he used assessments—rather than sale prices—for his purportedly comparable properties. That is true even though the grid that Mr. Rocco used referred to “comparable sales.” *Pet’r Ex. 1; See Hisle cross-examination of Short.*
- b) That issue aside, Mr. Rocco did not support the adjustments in his appraisal. For example, Mr. Rocco did not explain how he came up with his adjustment for the differences between the subject home’s size and the sizes of his purportedly comparable homes. Mr. Rocco similarly failed to explain how he determined that six of his seven comparable properties had superior locations or how he calculated his \$25,000 adjustment to account for that difference. Nor did Mr. Rocco explain why he adjusted his first three comparable properties’ assessments by \$50,000 to account for those homes being comparatively older than the subject home even though those three homes were different ages (17, 18, and 19 years old). *Hisle testimony and argument; Pet’r Ex. 1.*
- c) And Mr. Rocco failed to make any adjustments for obvious differences between the subject property and his comparables. For example, Mr. Rocco did not adjust for site differences despite the fact that the subject lot is 5.323 acres and none of his comparable properties have lots that are more than 1.80 acres. In fact, several of those lots are less than one acre. *See Hisle testimony; Pet’r Ex. 1.* While Mr. Short believed that a land adjustment was included in the net adjustment at the bottom of Mr. Rocco’s sales-comparison grid, the net adjustment is merely a total of all the adjustments shown in the adjustments column. Similarly, Mr. Rocco did not adjust any of his comparable properties’ assessments for differences between the comparable homes’ quality grades and the quality grade assigned to the subject home. The subject home is graded “A,” while Mr. Rocco’s first three comparables are graded as “B+1,” “B+2,” and “B.” *Id.*
- d) Mr. Short also claimed that the grade assigned to the subject home is too high. The Real Property Assessment Guideline for 2002 – Version A show samples of “A” grade homes. Ms. Hisle pointed to one such sample that, in her view, is similar to the subject home in terms of roof pitch and design. *Hisle testimony; Resp’t Ex. 9.*

- e) Finally, Mr. Short focused on the subject property's taxes. But this appeal is about the subject property's assessment—not Short Homeplace's taxes. Short Homeplace's evidence about taxes is therefore irrelevant. *Hisle testimony*.
- f) To support the subject property's assessment, Ms. Hisle looked to sales data for comparable properties in Delaware County. The subject property has an 8,270-square-foot home on 5.23 acres. According to Ms. Hisle, it is one of the biggest houses in Delaware County. Ms. Hisle therefore searched MLS listings for anything in Delaware County with 5,000 square feet or more that sold within the proper time frame for the March 1, 2008 assessment date, which according to 50 IAC 21-3-3(a), was January 1, 2006 to December 31, 2007. *Hisle testimony; Resp't Exs. 1, 16*.
- g) Ms. Hisle found three comparable properties that met her criteria:
- 5105 W Shoreline Terrace. This property has a 6,038-square-foot home on .77 acres. It sold on September 28, 2006 for \$755,000 or \$125.04 per square foot.
  - 2601 Rolling Hills. This property is in the same township as the subject property. It has a 5,874-square-foot home on two acres. It sold on November 11, 2007 for \$859,000 or \$146.24 per square foot.
  - 7715 N Landings Trail. This property has a 5,258-square-foot home on 1.06 acres. It sold on January 25, 2006 for \$736,500 or \$140.07 per square foot.

*Hisle testimony; Resp't Exs. 2-8*. The comparable properties sold for an average price \$137.10 per square foot, while the subject property was assessed for only \$118.75 per square foot. *Resp't. Ex. 8*. Yet the comparable properties all had considerably smaller homes and lots than the subject property. *Hisle argument*.

### **Record**

11. The official record for this matter is made up of the following:

- a) The Form 131 petition,
- b) A digital recording of the hearing,
- c) Exhibits:

Petitioner Exhibit 1: Appraisal Report  
 Petitioner Exhibit 2: Property Tax Summary  
 Petitioner Exhibit 3: Simmons Home Construction Grades: 1991-2002  
 Petitioner Exhibit 4: Form 115, Notification of Final Assessment Determination  
 Petitioner Exhibit 5: Form 130, Petition to Property Tax Assessment Board of Appeals for Review of Assessment

Petitioner Exhibit 6: Form 131, Petition to Indiana Board of Tax Review

- Respondent Exhibit 1: Subject Property Record Card (“PRC”)
- Respondent Exhibit 2: PRC for 5105 W. Shoreline Terrace
- Respondent Exhibit 3: MLS data sheet for 5105 W. Shoreline Terrace
- Respondent Exhibit 4: PRC for 2601 Rolling Hills
- Respondent Exhibit 5: MLS data sheet for 2601 Rolling Hills
- Respondent Exhibit 6: PRC for 7715 N. Landings Trail
- Respondent Exhibit 7: MLS data sheet for 7715 N. Landings Trail
- Respondent Exhibit 8: CMA Summary Report
- Respondent Exhibit 9: Real Property Assessment Guidelines for 2002 – Version A, Appendix A, p. 17, *Residential and Agricultural Grade*
- Respondent Exhibit 10: PRC for 5408 W. Deer Run Court
- Respondent Exhibit 11: Parcel overview for 5408 W. Deer Run Court
- Respondent Exhibit 12: PRC for 5409 W. Deer Run Court
- Respondent Exhibit 13: Parcel overview for 5409 W. Deer Run Court
- Respondent Exhibit 14: PRC for 4401 W. Legacy Drive
- Respondent Exhibit 15: MLS data sheet for 4401 W. Legacy Drive
- Respondent Exhibit 16: 50 IAC 21-3-3

- Board Exhibit A: Form 131 petition
- Board Exhibit B: Notice of Hearing
- Board Exhibit C: Hearing Sign-In Sheet

d) These Findings and Conclusions.

### **Objection**

12. Mr. Short objected to the Assessor’s exhibits on grounds that the Assessor’s purportedly comparable properties are not located anywhere near Mount Pleasant Township. *Short objection*. The Board overrules Mr. Short’s objection because it goes to the weight rather than the admissibility of the Assessor’s evidence.

### **Analysis**

#### **Burden of Proof**

13. Generally, a taxpayer seeking review of an assessing official’s determination must make a prima facie case proving both that the current assessment is incorrect and what the correct assessment should be. *See Meridian Towers East & West v. Washington Twp. Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also Clark v. State Bd. of Tax Comm’rs*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998).
14. In making its case, the taxpayer must explain how each piece of evidence relates to its requested assessment. *See Indianapolis Racquet Club, Inc. v. Washington Twp. Assessor*,

802 N.E.2d 1018, 1022 (Ind. Tax Ct. 2004) (“[I]t is the taxpayer’s duty to walk the Indiana Board ... through every element of the analysis”).

15. If the taxpayer makes a prima facie case, the burden shifts to the assessor to offer evidence to impeach or rebut the taxpayer’s evidence. *See American United Life Ins. Co v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004); *Meridian Towers*, 805 N.E.2d at 479.

#### Discussion

16. Short Homeplace did not make a prima facie case for reducing the subject property’s assessment. The Board reaches this conclusion for the following reasons:
- a) Indiana assesses real property based on its true tax value, which the 2002 Real Property Assessment Manual defines as “the market value-in-use of a property for its current use, as reflected by the utility received by the owner or a similar user, from the property.” 2002 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.3-1-2). Appraisers traditionally have used three methods to determine a property’s value: the cost, sales-comparison, and income approaches. *Id.* at 3, 13-15. Indiana assessing officials generally use a mass-appraisal version of the cost approach as set forth in the Real Property Assessment Guidelines for 2002 – Version A.
  - b) A property’s market value-in-use, as determined using the Guidelines, is presumed to be accurate. *See* MANUAL at 5; *Kooshtard Property VI, LLC v. White River Twp. Assessor*, 836 N.E.2d 501, 505 (Ind. Tax Ct. 2005) *reh’g den. sub nom. P/A Builders & Developers, LLC*, 842 N.E.2d 899 (Ind. Tax Ct. 2006). But a taxpayer may rebut that presumption with evidence that is consistent with the Manual’s definition of true tax value. MANUAL at 5. A market value-in-use appraisal prepared according to the Uniform Standards of Professional Appraisal Practice (“USPAP”) often will suffice. *Id.*; *Kooshtard Property VI*, 836 N.E.2d at 506 n. 6. A taxpayer may also offer actual construction costs, sales information for the subject or comparable properties, and any other information compiled according to generally accepted appraisal principles. MANUAL at 5.
  - c) By contrast, a taxpayer normally does not rebut an assessment’s presumed accuracy simply by contesting the methodology that the assessor used to compute it. *Eckerling v. Wayne Twp. Assessor*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006). Instead, the taxpayer must show that the assessor’s methodology yielded an assessment that did not accurately reflect the property’s market value-in-use. *Id.* Strictly applying the Guidelines does not suffice; rather, the taxpayer should offer the types of market-value-in-use evidence contemplated by the Manual. *Id.*
  - d) Regardless of the method used to challenge an assessment’s presumed accuracy, a party must explain how its evidence relates to the property’s market value-in-use as of the relevant valuation date. *O’Donnell v. Dep’t of Local Gov’t Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006). Otherwise, the evidence lacks probative value. *See id.*

(“[E]vidence regarding the value of property in 1997 and 2003 has no bearing upon 2002 assessment values without some explanation as to how these values relate to the January 1, 1999 value.”) (emphasis added). For March 1, 2008 assessments, the valuation date was January 1, 2007. 50 IAC 21-3-3(2009).

- e) First, Short Homeplace contends that it pays more in property taxes than do owners of similar properties in the same taxing district. The Board, however, lacks jurisdiction to hear general claims that a petitioner’s taxes are too high or that his taxes are higher than the taxes paid by other property owners. The Board is a creature of the legislature and has only the powers conferred by statute. *Whetzel v. Dep’t of Local Gov’t Fin.*, 761 N.E.2d 904, 908 (Ind. Tax Ct. 2002), *citing Matonovich v. State Bd. of Tax Comm’rs*, 705 N.E.2d 1093, 1096 (Ind. Tax Ct. 1999). Indiana Code § 6-1.5-4-1 gives the Board authority to determine appeals concerning assessed valuation, deductions, exemptions, and credits. The Board has no jurisdiction over taxes generally or tax rates.
- f) Of course Short Homeplace’s taxes are based on the subject property’s assessment. And the Board does have jurisdiction to hear Short Homeplace’s challenge to that assessment.
- g) Short Homeplace first challenges the quality grade assigned to the subject home. To support that challenge, Short Homeplace offered Mr. Short’s chart showing the quality grades assigned to eleven other homes built by Simmons Home Construction and his testimony that the home at 5201 W Pineridge, which is graded at “B+1,” is higher-quality construction than the subject home. Short Homeplace’s challenge to the subject home’s quality grade, however, amounts to an attack on the methodology that the Assessor used to value the subject property. As explained in *Eckerling*, that does not suffice to rebut the presumption that the subject property was accurately assessed.
- h) Even if Short Homeplace could generally rebut the presumption that the subject property was accurately assessed by disputing the quality grade assigned to the subject home, Short Homeplace did not offer probative evidence to show that the home’s quality grade was wrong. Construction quality is a composite characteristic, which describes the cumulative effects of workmanship, material costs, and design individuality used in building an improvement. REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A, app. A at 3. The Guidelines provide specification tables to assist in determining appropriate quality grades. *Id.* at 9-14. The descriptions in those tables are intentionally general and emphasize the most prominent elements of homes within a particular grade. *Id.* at 9. Although a home’s individual components may vary in construction quality, the overall construction quality tends to be consistent for the entire home. *Id.*
- i) Under Indiana’s old assessment system, which was based on strictly applying assessment regulations, a taxpayer challenging a building’s construction quality needed to do more than offer conclusory statements. *See Sollers Pointe Co. v. Dep’t*

*of Local Gov't Fin.*, 790 N.E.2d 185, 191 (Ind. Tax Ct. 2003). Thus, for example, a taxpayer could offer “specific evidence tied to the descriptions of the various grade classifications.” *Id.* (quoting *Whitley Prods., Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998)). Mr. Short, however, did not address the characteristics that determine a home’s quality grade. Nor did he offer specific evidence of the subject home’s characteristics or for that matter, of any other home’s characteristics. Instead, he offered only his own conclusory statements (both his own and those from Mr. Rocco and someone with Simmons Construction) about the subject home’s relative construction quality.

- j) Finally, Short Homeplace offered an appraisal report from Anthony Rocco, a certified appraiser. Mr. Rocco estimated the subject property’s value at \$775,000. The date as of which he estimated that value, however, is not clear. On the appraisal’s first page, Mr. Rocco indicates that he estimated the property’s value as of January 1, 2008. But later in the appraisal, Mr. Rocco indicates that he estimated the property’s value as of December 31, 2008. The second date is more likely what Mr. Rocco intended as his valuation date, given the following explanation on page 7 of the appraisal:

The date of report refers to the date of completion regarding the effective date of this report being December 31, 2008. This date was chosen to allow all available data, in the calender (sic) year 2008, to be extracted, analysed (sic), and incorporated. The date of inspection listed in this report refers to the effective date of the information contained herein. The conclusions and adjustments are intended to consider the economic climate and local real estate market trends during that specified period. [T]here is no age/date adjustment as the data used is all relative to the period described.

*Pet’r Ex. 1 at 7.*

- k) In either case, Mr. Rocco estimated the subject property’s market value as of a date more than a year after the relevant January 1, 2007 valuation date that applies to the assessment under appeal. And Short Homeplace did not offer any evidence to explain how Mr. Rocco’s opinion related to the subject property’s market value-in-use as of January 1, 2007. Thus, Mr. Rocco’s appraisal lacks probative value. *See O’Donnell* 854 N.E.2d at 95.
- l) The valuation date is not the only problem with Mr. Rocco’s appraisal. Despite describing his valuation approach as a “sales-comparison” analysis, Mr. Rocco did not use comparable sales to estimate the subject property’s market value. Instead, Mr. Short hired Mr. Rocco to appraise the subject property using the *assessments* for the same seven properties that Mr. Short used in comparing Short Homeplace’s taxes to the taxes paid by other homeowners. While there might be circumstances under which generally accepted appraisal practices would permit using a comparable property’s assessment, instead of its sale price, in a sales-comparison analysis, it is



not readily apparent what those circumstances would be. And neither Mr. Rocco nor Mr. Short did anything to address that question.

- m) Mr. Short did testify that no Delaware County homes had sold for more than \$400,000 or \$500,000 for the last eight or nine years. The Assessor, however, offered evidence of three sales above that mark in 2006-2007. But even if one assumes, as Mr. Short asserted, that the Assessor's sales involved properties that were not valid comparators, there are other generally accepted valuation approaches that an appraiser can use if he lacks sufficiently reliable data to do a sales-comparison analysis. Indeed, many appraisers apply both a sales-comparison and cost approach when appraising homes, particularly newer homes. Yet Mr. Rocco failed to explain why he chose to forego the cost approach and instead value the property using assessments for purportedly comparable properties that his client, Mr. Short, identified.
- n) Because Short Homeplace did not offer probative evidence of the subject property's market value-in-use, it failed to make a prima facie case for reducing the subject property's assessment.

### **Conclusion**

- 17. Short Homeplace failed to make a prima facie case for reducing the subject property's assessment. The Board therefore finds for the Assessor.

### **Final Determination**

In accordance with the above findings and conclusions, the Indiana Board of Tax Review now affirms the assessment.

ISSUED:

---

Chairman, Indiana Board of Tax Review

---

Commissioner, Indiana Board of Tax Review

---

Commissioner, Indiana Board of Tax Review

**IMPORTANT NOTICE**

**- APPEAL RIGHTS -**

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5, as amended effective July 1, 2007, by P.L. 219-2007, and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice. The Indiana Tax Court Rules are available on the Internet at <<http://www.in.gov/judiciary/rules/tax/index.html>>. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. P.L. 219-2007 (SEA 287) is available on the Internet at <<http://www.in.gov/legislative/bills/2007/SE/SE0287.1.html>>.